

SALLIE B. SANFORD

IBLA 76-123

Decided February 17, 1976

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting appellant's noncompetitive acquired lands oil and gas lease offer, NM-A 22351.

Affirmed.

1. Mineral Leasing Act for Acquired Lands: Consent of Agency --
Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas
Leases: Consent of Agency

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), requires that the consent of the administrative agency having jurisdiction of the acquired land described in a lease offer be obtained prior to the issuance of an oil and gas lease for such land. The Department of the Interior has no discretionary authority to lease such land where the consent is withheld.

APPEARANCES: Sallie B. Sanford, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This is an appeal from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated July 7, 1975, rejecting appellant's noncompetitive oil and gas lease offer, NM-A 22351 (Texas). Appellant's lease offer was filed pursuant to the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970). The lease application described certain tracts of land in Tarrant County, Texas, title to which was acquired by the United States. The surface of the land is under the jurisdiction of the Corps of Engineers, Department of the Army, and is administered as part of the Benbrook Lake project.

The basis of the decision below was a letter of January 6, 1975, from the Corps of Engineers to the BLM in which the Corps of Engineers expressed its unwillingness to consent to leasing the subject tracts of land for oil and gas. The letter indicated that one of the tracts described in the lease application is within 2,000 feet of a "dam and appurtenances" and not available for leasing for that reason. The other tracts identified in the application were reported to be unavailable for oil and gas leasing because the tracts are "below the conservation pool."

Appellant contends on appeal that the Corps of Engineers has "previously issued oil and gas leases covering lakes and lands in connection therewith subject to its jurisdiction." Appellant further indicates her willingness to execute stipulations designed to protect the land and improvements.

[1] The question raised by this appeal is whether the Department of the Interior has the discretion to issue an oil and gas lease for federal acquired lands pursuant to the Mineral Leasing Act for Acquired Lands of 1947, as amended, supra, where the consent of the administrative agency having jurisdiction over the land is withheld. The answer can be found in the terms of the statute itself.

Section 3 of the Mineral Leasing Act for Acquired Lands of 1947, 30 U.S.C. § 352 (1970), provides in part:

* * * No mineral deposit covered by this section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit * * * and subject to such conditions as that official may prescribe to insure the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered * * *.

The same requirement of consent is stated in the regulations at 43 CFR 3109.3-1.

The Department has held that the effect of this statute is to preclude mineral leasing on acquired lands, as contrasted with public domain, without the consent of the administrative agency having jurisdiction over the acquired land, and to cause any lease which does issue to be subject to any stipulations which said agency may impose. Frederick L. Smith, 21 IBLA 239 (1975); Susan D. Snyder,

9 IBLA 91 (1973); Thomas B. Cole, A-30444 (December 6, 1965). The Department has no discretionary authority to waive either the consent requirement or the execution of the stipulations required by the administrative agency. Frederick L. Smith, *supra*; Susan D. Snyder, *supra*; Thomas B. Cole, *supra*.

Because the Corps of Engineers has refused to consent to the leasing of these acquired lands, we must uphold the rejection of appellant's application. Appellant is free to pursue the matter of consent directly with the Corps of Engineers, but this offer will not be suspended to await any possible change in that agency's position against leasing these lands. Thomas B. Cole, *supra*.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge

